

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 07 November 2003

CASE NO.: 2001-LHC-3116

OWCP NO.: 1-150269

In the Matter of

RICHARD STETZER
Claimant

v.

LOGISTEC OF CONNECTICUT
Employer

And

SIGNAL MUTUAL INDEMNITY ASSOC.
Carrier

**SUPPLEMENTAL DECISION AND ORDER DENYING IN PART AND
GRANTING IN PART EMPLOYER'S MOTION FOR RECONSIDERATION**

On August 11, 2003, I issued a decision and order awarding benefits to the Claimant in this matter which arises from a claim brought under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.* (the Act). In this decision, I found that the Claimant was entitled to attorney's fees under section 28 of the Act. The Claimant's attorney was accordingly allowed 30 days to file an application for fees, and the Employer and Carrier were allowed 15 days after the filing of a fee application in which to file any objection.

On August 26, 2003, the Claimant's Attorney, David A. Kelly, submitted an application for attorney's fees and client expenses for services performed before this office. No objection was received from the Employer or Carrier. On September 23, 2003, I issued a supplemental decision and order awarding attorney's fees to Mr. Kelly in the amount of \$5,333.20.

On October 3, 2003, Peter D. Quay, counsel for the Employer and Carrier, submitted a motion for reconsideration of the supplemental decision and order awarding attorney's fees. In his motion, Mr. Quay asserts that attorney's fees awarded to Mr. Kelly should be reduced because (1) the Claimant did not successfully prosecute the issue of his average weekly wage; (2) the Claimant was only partially successful on the issue of temporary partial disability; and (3) the entries for Attorney Anthony Gallo Hall's services on August 15, 2003, are not compensable.

Mr. Kelly has responded arguing that Mr. Quay did not timely file his objection to the fee application and that Mr. Quay has not shown that the award was arbitrary, capricious, an abuse of discretion, or not in accordance with the law.

The Employer has not timely filed its objections to the fee application and has offered no cause to excuse the failure to timely object. Furthermore, as Mr. Kelly correctly asserts, the amount of a fee award is discretionary and may be set aside only if the challenging party shows the award is arbitrary, capricious, an abuse of discretion, or not in accordance with the law. *Rogers v. Ingalls Shipbuilding*, 28 BRBS 89, 90 (1993) (*Rogers*); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980). The Employer has not shown this in regards to the fees allowed for the average weekly wage issue and for successful prosecution of the temporary partial disability claim. Moreover, though the Claimant may not have received the exact average weekly wage he sought, he was successful in obtaining compensation for his work-related injury. If the plaintiff has obtained excellent results, the fee award should not be reduced simply because he failed to prevail on every contention raised. *Rogers*, 28 BRBS at 92. The Claimant's contention that the average weekly wage should be calculated at a higher rate was simply a part of his overall claim for temporary partial disability benefits, which the Claimant successfully prosecuted. This issue is not a separate, unrelated claim requiring a reduction in attorney's fees under *Hensley v. Eckerhart*, 461 U.S. 424 (1983), as the Employer argues. Furthermore, the Claimant sought and, contrary to the Employer's assertion, was awarded ongoing temporary disability benefits. See Decision and Order at 12-13, 14. Therefore, the claim for temporary partial disability benefits was completely successful. Consequently, the Employer's motion for reconsideration of the award of attorney's fees is denied in part as to these issues.

The Employer also objects to the award of fees for Attorney Gallo Hall's services on August 15, 2003. I will grant the Employer's motion in part to reconsider this issue only. It is well settled that an administrative law judge can award fees for services performed before the Office of Administrative Law Judges, *i.e.*, the hours spent between the close of the informal conference proceedings before the district director and the issuance of the judge's decision and order. *Revoir v. General Dynamics Corp.*, 12 BRBS 524, 527-528 (1980). Services of an attorney to work on an appeal to the Benefits Review Board after the issuance of the administrative law judge's decision and order do not constitute services performed before the Office of Administrative Law Judges. Accordingly, I will disallow the entries for Attorney Gallo Hall on August 15, 2003, specifically 0.10 hours to discuss the "Irvin decision" and 0.60 hours to prepare the appeal. Mr. Kelly's requested fee of \$5,333.20 will be reduced by \$98.00, resulting in an attorney's fee award of \$5,235.20.

Therefore, after reviewing the parties submissions, I find that the total fees of \$5,235.20 awarded in this matter are reasonably commensurate with the necessary work performed, taking into consideration the quality of Attorney Kelly's representation, the complexity of the legal issues litigated and the amount of benefits awarded. 20 C.F.R. § 702.132. For these reasons, I conclude that grounds for reconsideration have been established only with respect to the issue of fees billed for Attorney Gallo Hall's services on August 15, 2003.

ORDER

The Employer's motion for reconsideration is DENIED in part and GRANTED in part. The Employer and Carrier shall pay directly to the Claimant's attorney, David A. Kelly, attorney's fees in the amount of \$5,235.20.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts